

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER A. CARRASCO,  
Petitioner,  
v.  
ROBERT A. HOREL, Warden,  
Respondent.

No. C 07-5666 MMC (PR)

**ORDER TO SHOW CAUSE**

On November 7, 2007, petitioner, a California prisoner incarcerated at Pelican Bay State Prison and proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee.

**BACKGROUND**

In 2001, in the Superior Court of Santa Clara County, petitioner was convicted of assault with a deadly weapon, and battery with serious bodily injury. He was sentenced to a term of thirty years to life in state prison. The California Court of Appeal affirmed in part and reversed in part; the California Supreme Court denied the petition for review. In 2005, petitioner filed state habeas corpus petitions in the California Court of Appeal and the California Supreme Court; both petitions were denied.

**DISCUSSION**

This Court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a);

1 Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall “award the writ or issue an  
2 order directing the respondent to show cause why the writ should not be granted, unless it  
3 appears from the application that the applicant or person detained is not entitled thereto.”  
4 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the  
5 petition are vague or conclusory, palpably incredible, or patently frivolous or false. See  
6 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (quoting Blackledge v. Allison,  
7 431 U.S. 63, 75-76 (1977)).

8 Petitioner claims that his conviction and sentence for second degree murder are  
9 invalid because: the prosecutor knowingly presented false evidence and perjured testimony,  
10 inflamed the jury against petitioner during closing argument, and suppressed material  
11 exculpatory evidence; petitioner was denied the effective assistance of counsel; the trial  
12 court’s instructions to the jury were erroneous; and the trial court refused to strike one of  
13 petitioner’s prior convictions for sentencing purposes. Liberally construed, petitioner’s  
14 claims are cognizable.

### 15 CONCLUSION

16 For the reasons stated above, the Court orders as follows:

17 1. The Clerk of the Court shall serve by certified mail a copy of this order and the  
18 petition, along with all attachments thereto, upon respondent and respondent’s counsel, the  
19 Attorney General for the State of California. The Clerk shall also serve a copy of this order  
20 on petitioner.

21 2. Respondent shall file with the Court and serve on petitioner, within **ninety (90)**  
22 days of the date this order is filed, an answer conforming in all respects to Rule 5 of the  
23 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not  
24 be granted based on petitioner’s cognizable claims. Respondent shall file with the answer  
25 and serve on petitioner a copy of all portions of the state trial record that have been  
26 transcribed previously and that are relevant to a determination of the issues presented by the  
27 petition.

28 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with

1 the Court and serving it on respondent's counsel within **thirty (30)** days of the date the  
2 answer is filed.

3 3. In lieu of an answer, respondent may file, within **ninety (90)** days of the date this  
4 order is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory  
5 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files  
6 such a motion, petitioner shall file with the Court and serve on respondent an opposition or  
7 statement of non-opposition within **thirty (30)** days of the date the motion is filed, and  
8 respondent shall file with the Court and serve on petitioner a reply within **fifteen (15)** days of  
9 the date any opposition is filed.

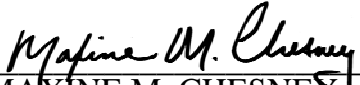
10 4. Petitioner is reminded that all communications with the Court must be served on  
11 respondent by mailing a true copy of the document to respondent's counsel.

12 5. It is petitioner's responsibility to prosecute this case. Petitioner must keep the  
13 Court and respondent informed of any change of address and must comply with the Court's  
14 orders in a timely fashion. Failure to do so may result in the dismissal of this action for  
15 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

16 6. Upon a showing of good cause, requests for a reasonable extension of time will be  
17 granted as long as they are filed on or before the deadline they seek to extend.

18 IT IS SO ORDERED.

19 DATED: April 11, 2008

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21 MAXINE M. CHESNEY  
22 United States District Judge  
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